

Block 6: CERTIFICATION: to be signed by an officer of the filer

601 Filer 499 ID [from Line 101]

NEW

602 Legal name of reporting entity [from Line 102]

INCOMM SOLUTIONS

Section IV of the instructions provides information on which types of reporting entities are required to file for which purposes. Any entity claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service Administrator will determine which entities meet the *de minimis* threshold based on information provided in Block 4, even if you fail to so certify, below.]

603 I certify that the reporting entity is exempt from contributing to:

Universal Service ☒TRS ☒NANPA ☒LNP Administration ☒

Provide explanation below:

Exempt according to the FCC Order # DA 08-1689 issued July 17, 2008.

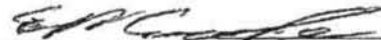
604 Please indicate whether the reporting entity is

State or Local Government Entity ☐I.R.C. § 501 Tax Exempt ☐

605 I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to Sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules. ☒

I certify that I am an officer of the above-named reporting entity as defined on page 33 of the instructions, that I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate. If the above-named reporting entity is filing on a consolidated basis, I certify that this filing incorporates all of the revenues for the consolidated entities for the entire year and that the filer adhered to and continues to meet the conditions set forth in Section II-B of the instructions.

606 Signature



607 Printed name of officer

First

EDWARD

MI

P

Last

COOKE

608 Position with reporting entity

CO-CEO

609 Business telephone number of officer

(201)-612-9696 ext-4085

610 Email of officer || Required if available -- not for public release ||

PCOOKE@INCOMM SOLUTIONS.COM

611 Date

11/3/08

612 Check those that apply:



Original April 1 filing for year



New filer, registration only



Revised filing with updated registration



Revised filing with updated revenue data

Do not mail checks with this form. Send this form to: Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036

For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet information: (888) 641-8722 or via email: Form499@universalservice.org

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

Save time, avoid problems -- file electronically at

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FCC Form 499-A
February 2008

EXHIBIT 4



September 27, 2011

E. Paul Cooke
President
InComm Solutions, Inc.
Glen Rock, NJ 07452

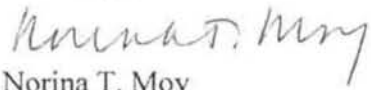
Dear Mr. Cooke:

In response to InComm's recent request, Sprint has compiled the enclosed quarterly interstate wholesale revenue data, and federal Universal Service Fund surcharge data, reflecting amounts billed by Sprint to InComm for the period beginning October 2008 and ending June 2011. Sprint has compiled this data through a search of records that it used in connection with its preparation of certified quarterly and annual telecommunications reporting worksheets (FCC Forms 499-Q and 499-A) submitted by Sprint to the Universal Service Administrative Company (USAC) for the referenced period, in compliance with Section 54.711(a) of the FCC's Rules, 47 C.F.R. § 54.711(a).

Our intention in supplying this wholesale revenue and surcharge data to InComm is to provide InComm with a record of the wholesale revenue received from InComm that Sprint previously reported to USAC as part of Sprint's quarterly and annual FCC Form 499 filings during the referenced period.

If you have any questions, please feel free to contact me at (703) 433-4503.

Sincerely,


Norina T. Moy
Director, Government Affairs

Cc: Jeffrey Mitchell

InComm Revenue and Federal USF Surcharges

	2008 4Q	2009 1Q	2009 2Q	2009 3Q	2009 4Q	2010 1Q	2010 2Q	2010 3Q	2010 4Q	2011 1Q	2011 2Q	Total
Interstate Wholesale Rev	241,373.08	258,508.10	253,823.48	241,967.58	209,861.01	190,781.08	159,032.06	163,059.16	170,078.95	174,786.14	145,993.15	2,209,263.79
Federal USF Surcharges	27,658.00	25,516.14	29,969.52	32,361.90	26,028.64	25,994.47	22,459.90	20,194.72	20,083.72	25,471.29	20,443.07	276,181.37

EXHIBIT 5

LUKAS, NACE, GUTIERREZ & SACHS, LLP

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MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX

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HON. GERALD S. MCGOWAN*

TAMARA DAVIS BROWN*

JEFFREY A. MITCHELL

ROBERT S. KOPPEL*

*NOT ADMITTED IN VA

October 14, 2011

VIA ELECTRONIC MAIL

Michelle Garber
Director of Financial Operations
USAC
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

**Re: InComm Solutions, Inc. (Filer ID 828883)
Overpayment of Universal Service Contributions**

Ms. Garber:

As you know, we represent InComm Solutions, Inc. ("InComm"), a provider of stand-alone audio bridging (teleconferencing) services. InComm recently came into compliance with its Telecommunications Reporting Worksheet filing requirements and has now remitted to USAC \$578,215.48 in current and prior period Universal Service Fund ("USF") contributions and late filing penalties. However, we are following up on previous communications¹ concerning the imminent over-collection of USF contributions from InComm. This over-collection will occur because, during the time InComm was not in compliance with its USF filing obligations, InComm's underlying wholesale carrier, in accordance with Federal Communications Commission ("FCC") rules, reported and was assessed USF contributions based on over \$2.2 million of historical InComm assessable interstate revenue. Thus, contributions based on this portion of InComm's revenue have already been collected by USAC.

We write now to contest this over-collection and to provide USAC with specific information obtained from InComm's wholesale carrier concerning the exact amount of the previously reported revenue. This information will enable USAC to precisely calculate the amount of USF contributions already assessed and collected on this revenue and, just as importantly, permit USAC to accurately report the size of the overall USF contribution base. Because, in accordance with FCC rules, this historical InComm revenue has already been assessed as end-user revenue, we

¹ See Letter from Jeffrey Mitchell and John Cimko, Counsel for InComm, to USAC (August 31, 2011) ("August 31 Letter"); see also Letter from Jeffrey Mitchell and John Cimko, Counsel for InComm, to USAC Form 499 Data Collection Agent (June 30, 2011) ("June 30 Letter").

request that USAC accept the information we are providing, and recalculate InComm's contribution obligations. *See* 47 C.F.R. § 54.713(a) ("Once a contributor complies with the Telecommunications Reporting Worksheet filing requirements, [USAC] may refund any overpayments made by the contributor, less any fees, interest, or costs."). InComm is not seeking adjustments to previously assessed late fees or penalties associated with its late filing of Telecommunications Reporting Worksheets.

As set forth in the summary tables below, we calculate the overpayment amount to be \$261,341.00:

Revenue Time Period (Worksheet)	2008/4Q (2009 499-A)	2009 (2010 499-A)	2010 (2011 499-A)	2011/1Q; 2Q (Nov 2010 499-Q; Feb 2011 499-Q)
Original Base	\$872,237	\$2,994,203	\$2,224,507	\$1,144,500
Previously Reported Base	241,373	964,160	682,951	320,779
Adjusted Base	630,864	2,030,043	1,541,556	823,721
Original Obligation	88,868	334,124	284,459	148,962
Adjusted Obligation	64,275	226,533	197,127	107,137
USF Overpayment	\$24,592	\$107,591	\$87,332	\$41,825

SUMMARY	
2009 499-A	\$24,592.27
2010 499-A	107,591.01
2011 499-A	87,332.50
SUBTOTAL	\$219,515.77
2012 499-A ²	41,825.23
TOTAL	\$261,341.00

Background

As we have set forth previously, InComm has been providing teleconferencing services since 2000.³ Effective October 1, 2008, the FCC required providers of audio bridging services such as

² InComm recognizes that the precise refund amount based on over-reported 2011 revenue will not be known until the 2012 A/Q true-up process is complete.

³ *See* June 30 Letter and August 31 Letter. For convenience, we briefly recount the basic facts.

InComm to begin making USF contributions.⁴ At the time, InComm made significant efforts to comply with the new rule. InComm submitted required quarterly Telecommunications Reporting Worksheets to USAC on August 1, 2008, and November 3, 2008, respectively. However, InComm was contacted by USAC staff indicating that the forms could not be processed due to missing information.⁵ While InComm intended to pursue the non-acceptance of these original filings, the 2008 financial crisis battered the company and it has only recently come into a position to resolve the issue. Nevertheless, InComm established (in November 2008), and has continued to maintain, a separate bank account for the sole purpose of accumulating funds to satisfy its USF contribution obligations.

Between October 2008 and June 2011, because InComm was not able to certify to its underlying carrier that it was contributing to the USF, the underlying carrier, in accordance with FCC rules,⁶ treated InComm's revenue as "end-user" revenue and assessed InComm USF surcharges.⁷ InComm paid these USF surcharges – in excess of \$276,000 through June 2011 – and believed, albeit erroneously, that it was in partial compliance with its USF obligations.⁸ Notwithstanding, InComm understood the importance of direct and full compliance with its USF contribution obligations. This is why InComm, without prompting, contacted USAC and, on June 30, 2011, filed all required current and prior Telecommunications Reporting Worksheets.

In July 2011 InComm received its first monthly contributor invoice from USAC reflecting \$6,666.94 in late filing penalties and over \$285,000 in current and past USF obligations (representing one-third of current and past due quarterly obligations), which it paid in full. In August, InComm received the second of the three monthly invoices for the quarter which it has also paid in full. In September, InComm received its third invoice for the quarter which it intends to pay, less the USF credit amount of \$261,341 calculated above. InComm does not have the financial ability to double pay these additional obligations which have already been submitted to USAC as contributions once.

Finally, also in September, InComm obtained a letter from its underlying wholesale carrier providing an accurate statement of wholesale revenues received from InComm between October 2008 and June 2011 that the carrier had previously reported in its Telecommunications Reporting Worksheet filings.⁹ The revenue information was compiled from "records . . . used in connec-

⁴ See *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731, 10739 (2008) ("*InterCall Order*"), *recon. pending*.

⁵ The filings originally submitted to USAC did not provide an FCC Registration Number which is presumably the reason they could not be processed.

⁶ See Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 21-22 (2011).

⁷ See 47 C.F.R. § 54.712(a).

⁸ InComm was not represented by regulatory counsel during this period.

⁹ See Letter from Norina T. Moy, Director, Government Affairs, Sprint, to E. Paul Cooke, President, InComm Solutions, Inc. (September 27, 2011).

tion with . . . preparation of certified quarterly and annual [Form 499s] submitted . . . to [USAC].”¹⁰ This letter is attached.

Over-Collection of USF Obligations from InComm Is Inconsistent with FCC USF Policy

The current USF contribution methodology requires assessment of all end-user telecommunications revenues. The FCC chose to base USF contributions on end-user revenues precisely to avoid collecting “from the same services twice.”¹¹ As the FCC explained, “double counting of revenues distorts competition because it disadvantages resellers.”¹² Nevertheless, the FCC has established strong rules that ensure that revenue “from the same service” is included in the contribution base at least once. Thus, although wholesale (or “carrier’s carrier”) revenue is generally exempt from USF assessment, wholesale carriers must treat their revenue as end-user revenue when the wholesale carrier lacks a reasonable expectation that its customers are contributing to the USF.¹³ Similarly, the Wireline Competition Bureau (“Bureau”) indicated in a decision four years ago that reseller carriers have an independent obligation to report their revenue from end-user customers and to contribute to the USF irrespective of any USF surcharges already assessed and paid to their underlying carrier.¹⁴

In the *ATS Order*, the Bureau concluded that contributors cannot contract their USF reporting and contribution obligation to their underlying wholesale carriers,¹⁵ and that resellers must look to their underlying carriers rather than to USAC to resolve any potential double payment situations.¹⁶ The Bureau explained that the petitioners in the *ATS Order* must look to their underlying carriers because USAC lacked “sufficient information upon which to verify the extent of the alleged double-payment.”¹⁷ The Bureau further explained: “[USAC] generally does not have the ability to determine with any certainty whether and on what revenues a ‘double payment’ was

¹⁰ *Id.*

¹¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9206-07, ¶ 845 (1997) (“*First Report and Order*”) (subsequent history omitted); cf. *id.* at 9207, ¶ 847 (rejecting USF assessment of gross revenue because it “creates a double-payment problem for resold services and thus is not competitively neutral”).

¹² *Id.* at 9207, ¶ 845.

¹³ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Request for review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, USAC Audit Report No. CR2005CP007, Order, 24 FCC Rcd 10824 (Wireline Comp. Bur. 2009) (“*Global Crossing*”).

¹⁴ *Federal-State Joint Board on Universal Service, American Telecommunication Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, TON Services, Inc., Value-Added Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 5009, 5011, ¶ 6 (Wireline Comp. Bur. 2007) (“*ATS Order*”) (“Petitioners generally seek a credit against their USAC bills for payment made to their underlying carriers, and a credit for late payment fees assessed by USAC”).

¹⁵ *Id.* at 5012, ¶ 12.

¹⁶ *Id.* at 5012, ¶ 9.

¹⁷ *Id.* at 5011, ¶ 7.

received.”¹⁸ Finally, the Bureau noted that recourse was also properly to the underlying carriers for double payments because the underlying carriers apparently erred in treating petitioners as end-user customers.¹⁹

There are several critical facts that distinguish InComm’s situation from that addressed in the *ATS Order*. First, unlike the *ATS Order* petitioners, InComm is not seeking exemption from all USF obligations during the period in which InComm paid USF surcharges to its underlying carrier, nor is InComm seeking a credit equal to the USF surcharges paid to its underlying carrier.²⁰ Second, unlike in the *ATS Order* where the precise amount of the double payment could not be determined, InComm has obtained from its underlying carrier the double-reported revenue which will allow USAC to exactly calculate the double-payment amount. Third, unlike in the *ATS Order* where petitioners attempted to contract away their USF obligations and their underlying carriers *mistakenly* reported and contributed on petitioners’ revenue, the underlying carrier in this case was *obligated* by FCC rules to report and contribute based on InComm’s unreported revenue (which it did).²¹

InComm, by providing USAC with the precise amount of previously reported revenue, has made determining the exact amount of the double-payment as simple as calculating the obligation in the first instance. Moreover, USAC has an obligation to accurately report contribution base revenues.²² InComm, by providing USAC with the amount of previously reported contribution base, will enable USAC to avoid overstating the contribution base for both 2011 and to the extent USAC updates prior periods.

¹⁸ *Id.* at 5013, ¶ 13.

¹⁹ *Id.* at 5013, ¶ 14 (finding that “proper recourse . . . is with those underlying carriers” who “may have erred” in treating petitioners as end-user customers).

²⁰ InComm recognizes, for example, that such surcharges were assessed on *wholesale* revenue only and that InComm has retail revenues that cannot be exempt. Moreover, assessed USF surcharges are unlikely to correspond precisely to the double payment because they are not calculated using the same methodology as USF obligations (*e.g.*, no circularity factor is applied).

²¹ In theory, underlying wholesale carriers can revise their Telecommunications Reporting Worksheets to exclude the double reported revenue and thereby obtain USF credits from USAC. In practice this rarely occurs because of the administrative difficulty and the fact that revision deadlines prohibit downward revenue revisions after one year. In this case, however, the underlying carrier is arguably not permitted to make such a revision because it correctly reported InComm’s revenue in the first instance in accordance with FCC rules.

²² The Commission’s rules require that the USAC Administrator “shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, interstate access universal service support, interstate common line support, and high-cost and insular areas.” 47 C.F.R. § 54.702(h). The Administrator has a general responsibility to carry out this task efficiently, effectively, and in a competitively neutral manner. *See id.*, § 54.702(a) (providing that “[t]he Universal Service Administrative Company is appointed the permanent Administrator of the federal universal service support mechanisms, subject to a review after one year by the Federal Communications Commission to determine that the Administrator is administering the universal service support mechanisms in an efficient, effective, and competitively neutral manner”). This ongoing duty to report collected amounts efficiently and effectively includes an obligation to accurately report contribution base revenues.

Finally, there may be some concern that permitting InComm not to submit a double payment of USF contributions in this case could tend to erode overall compliance with contribution obligations by carriers and other service providers with assessable interstate revenues. However, in 2007 the Commission significantly strengthened late-filing penalties "to encourage complete and timely payment and filing."²³ InComm is not seeking to avoid these penalties, which provide a substantial deterrent to similar actions by other resellers. While the imposition of such penalties serves as a reasonable means of enforcing the FCC's USF rules, any requirement that InComm must also make duplicative contributions would be unjustifiably punitive.

Over-Collection of USF Obligations from InComm Would be Unfair and Cause Undue Hardship

InComm has acted in good faith to come into compliance with USF obligations first imposed on it in 2008 by the *InterCall Order*. That good faith has been further shown by full payment of \$578,215.48 in current and prior period USF obligations and late filing fees. Requiring InComm to pay USF contributions based on revenue that has already been reported – and been assessed for USF contribution purposes – would be patently unfair and would impose a substantial hardship on InComm. Given the continuing difficult economy, collection would threaten InComm's ability to continue as a going concern. Indeed, there is substantial risk double collection of these fees will cause InComm to cease operations resulting, among other things, in the loss of employment for its 64 employees and severe economic hardship for their families.

Accordingly, on behalf of InComm, we respectfully request that USAC recalculate InComm's USF contribution obligations utilizing the provided revenue information previously reported as part of the USF contributions base by InComm's underlying wholesale carrier.

Sincerely,



Jeffrey A. Mitchell
John Cimko
Counsel for InComm Solutions, Inc.

Enclosure

cc: David A. Capozzi, Esq., USAC
Vickie S. Robinson, Esq., FCC

²³ *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16375-79, ¶¶ 9-13 (2007).



September 27, 2011

E. Paul Cooke
President
InComm Solutions, Inc.
Glen Rock, NJ 07452

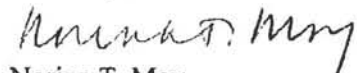
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Norina T. Moy
Director, Government Affairs

Cc: Jeffrey Mitchell

InComm Revenue and Federal USF Surcharges

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Federal USF Surcharges	27,658.00	25,516.14	29,969.52	32,361.90	26,028.64	25,994.47	22,459.90	20,194.72	20,083.72	25,471.29	20,443.07	276,181.37